

### DOD DISASTER RESPONSE: *“UNITY OF EFFORT VERSUS UNITY OF COMMAND”*

BY

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USAWC PROGRAM RESEARCH PAPER

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Topic approved by  
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## **ABSTRACT**

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Hurricane Katrina left the vast majority of Americans feeling the government response had failed at all levels. Included in the public scrutiny was the view that the Department of Defense's (DOD) efforts were slow and uncoordinated. September 2, 2005, aboard Air Force One, President Bush encouraged Louisiana Governor Blanco to acquiesce and federalize her National Guard forces. This would place them under the command of Lieutenant General Honore, the Joint Task Force Katrina Commander. She respectfully declined. One year later, her decision came to rest in Section 1076 of the Warner Defense Authorization Act. With little opportunity for debate, this legislation modified the 1807 Insurrection Act by adding a clause which specifically authorizes the President to federalize the National Guard for disaster response. This paper will demonstrate that modifying the Insurrection Act was unnecessary and it should be repealed.



## DOD DISASTER RESPONSE: “*UNITY OF EFFORT VERSUS UNITY OF COMMAND*”

Local control and state sovereignty are important principles rooted in our nation’s birth that cannot be discarded merely to achieve more efficient joint military operations on American soil.

— The Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina

The White House, Congress and the Government Accountability Office have all performed autopsies on the governmental response to Hurricane Katrina. Many of their recommendations were similar in nature. For example, all were critical of the Department of Defense’s (DOD) delayed and uncoordinated response. However, amidst the recommendations, none of the reports mentioned expanding the President’s powers over the National Guard. Despite the absence of this recommendation, the President signed into law Section 1076 of the Warner Defense Act (WDA) which allows him to federalize the National Guard specifically for disaster response without the consent of state governors.<sup>1</sup>

The state governors and their adjutants general consider the bill a political “end-around” by the President and the DOD in response to the embarrassment caused by Louisiana Governor Kathleen Blanco’s refusal to federalize her National Guard Soldiers and Airmen. Senator Patrick Leahy (D-Vermont) is spearheading legislation to have it repealed. He comments on Section 1076, “Here the Administration has misunderstood the lessons of Hurricane Katrina. The National Guard, serving at the State level under the command of the Governors, actually performed spectacularly after



Katrina.”<sup>2</sup> The net effect of Section 1076 was similar to taking a wire-brush to an existing strained relationship between the National Guard and Northern Command (NORTHCOM). It also served as a “call to arms” for states’ rights advocates. In essence, it sent a message to the Governors that the President and the Secretary of Defense (SECDEF) do not have confidence in the National Guard’s ability to perform the Homeland Defense/Homeland Security (HLD/HLS) mission.

Section 1076 of the WDA which modified the 1807 Insurrection Act to expand the President’s authority over the National Guard is unnecessary and should be repealed. Consider the following reasons. First, the President already had the enumerated power to federalize the Guard within the 1807 Insurrection Act.<sup>3</sup> Secondly, the National Guard is more prepared for disaster response than any other branch of the military. Finally, each of the aforementioned reports includes initiatives to improve the integration of NORTHCOM and National Guard response capabilities. Implementing these recommendations must become a DOD priority to assure a *unity of effort versus a unity of command*.

It is unclear why Congress passed Section 1076. The original Insurrection Act already provided the President the power to federalize the National Guard. Past Presidents have set the precedent. This will be demonstrated in examples that follow. This seemingly simple amendment has linkages to several existing statutes. Therefore, in the interest of providing a more thorough understanding of the argument to reverse Section 1076, it is necessary to first review the National Guard’s mission, duty statuses and its relationship with NORTHCOM. Appropriately, brief summaries of related

legislation will follow. These include the Posse Comitatus Act, the Stafford Act, and finally, the Insurrection Act itself.

### **The Mission of the National Guard and Duty Status Options**

Dating back to 1636, the National Guard (then referred to as the colonial militia) has been primarily focused on HLD, and secondarily on being a strategic reserve for the “away game.” Since September 11, 2001, the role of the National Guard has increased significantly as the lead component for the Department of Defense (DOD) in disaster response scenarios. Often misconstrued as a higher headquarters, the National Guard Bureau (NGB) serves in an administrative capacity. It makes policy and plans for the 54 states and territories while coordinating with the United States Army and Air Force. It does not exercise operational control over any National Guard units. According to the Constitution, that function rests with the state governors, unless usurped by the President with the permission of Congress.<sup>4</sup>

The Guard is unique in comparison to its active duty brethren because it can serve in one of three duty status options during disaster response. The options are state active duty, Title 32, or Title 10. Depending on one’s perspective, each of these statuses has its advantages and disadvantages. See Figure 1 below for a better understanding of these options.<sup>5</sup>

### **Military Duty Status Options for the National Guard**

<b>Duty Status</b>	<b>Command Authority</b>	<b>Duty Location</b>	<b>Fund Source</b>	<b>Mission(s)</b>	<b>Military Legal Code</b>	<b>Exempt from Posse Comitatus</b>
<b>State Active Duty</b>	State Governor	In accordance with state law	State	State emergencies - law enforcement	State military code	Yes
<b>Title 32</b>	State Governor	USA	Federal	Training or state emergencies - law enforcement	State military code	Yes
<b>Title 10</b>	President	Worldwide	Federal	As ordered	Uniform Code of Military Justice	No – Unless Insurrection Act invoked

**Figure 1**

### **The NORTHCOM Mission and Its Relationship to the Guard**

NORTHCOM is a unified command that was established by DOD in 2002.<sup>6</sup> It is headquartered in Peterson Air Force Base, Colorado and commanded by a 4-star general or admiral. It has the dual mission of homeland defense and Defense Support to Civil Authorities (DSCA). As a Combatant Command (COCOM), the Commander receives guidance from the President through the Secretary of Defense. NORTHCOM focuses the on command, control, coordination and integration of several agencies that cross many different jurisdictions. It is actively engaged in contingency planning, specifically Contingency Plan (CONPLAN) 2501, which is heavily reliant on the National Guard for its execution. CONPLAN 2501 provides operational guidance on how the DOD will perform the DSCA mission in large scale disaster scenarios.<sup>7</sup>

If the DOD response during Katrina had been federalized, the National Guard forces would have reported to NORTHCOM through Lieutenant General Honore, Commander, Joint Task Force Katrina.<sup>8</sup> In the months that have passed, efforts to integrate the capabilities of the Guard and NORTHCOM have included several participatory exercises. All of the scenarios are scripted so that National Guard units in the operation are federalized and NORTHCOM takes over command and control. During exercises, the participants do not discuss whether or not the state governors acquiesce, or if the President invokes the Insurrection Act.

### **The Posse Comitatus Act (PCA)**

The PCA was passed into law after Reconstruction 1878. Its original purpose was to prohibit federal troops from supervising state elections in the South. In its current interpretation, it prohibits Title 10 troops from acting in a law enforcement capacity within the states unless they are “under circumstances expressly authorized by...an act of Congress.”<sup>9</sup> Although no one has ever been charged, a violator may be subject to fines and a two year prison sentence.

Since its inception, PCA has evolved into a very controversial piece of legislation. Sydney Freedberg, Jr., writer for the *National Journal*, refers to it as a “slender reed of a law which has become a pillar of democracy.”<sup>10</sup> Interestingly, its enforcement has never applied to state governors and the National Guard. In state active duty and Title 32 statuses, the state governor retains command and control and the Guard is exempt of the restrictions imposed by the PCA. This allows the Guard to perform in a law enforcement capacity.

Title 10 status is synonymous with being federalized. In this situation, the President has command and control. A disadvantage of the federal status is that unless the President invokes the Insurrection Act, the PCA applies and prohibits federalized troops from performing law enforcement duties. For example, in the aftermath of Katrina, Soldiers from the 82<sup>nd</sup> Airborne and 1<sup>st</sup> Cavalry Divisions could perform in support of the New Orleans Police Department by performing house-to-house searches, patrolling, or manning traffic control points. However, they could not arrest, detain or serve warrants like their Title 32 counterparts. The significance of PCA is that, real or perceived, it is considered a major obstacle to federalization.<sup>11</sup>

### **The Stafford Act**

The Robert T. Stafford Disaster Relief Act of 1984 provides state governors an opportunity for federal assistance following a natural disaster.<sup>12</sup> Military assistance is one of the many resources that can be provided. However, it is important to note that Title 10 forces responding under the Stafford Act are not exempt from PCA, unless the President invokes the Insurrection Act. In order for the governor to receive federal assistance, the Stafford Act requires that the governor request that the President to declare a state of emergency. On August 27, 2005, Governor Blanco received a *state declaration of emergency* from President Bush.<sup>13</sup>

Unfortunately, Governor Blanco may have caused some confusion when she asked for “everything that you’ve got” for federal assistance. The President did not interpret this as a request for a Title 10 response. This may have contributed to the finding that the DOD response was perceived as slow.<sup>14</sup>

On 30 August, the President declared a *federal emergency*. The next day he declared an *Incident of National Significance*. It was not until 3 September, a week after Governor Blanco initiated the Stafford Act, that Soldiers from the 82d Airborne and 1<sup>st</sup> Cavalry Division began to arrive in Louisiana.<sup>15</sup>

### **The Meeting on Air Force One**

In the aftermath of Katrina, many decisions by key leaders were called into question. Governor Blanco's decision to retain control of the National Guard is one of the more contentious. September 2, 2005, on Air Force One, the President was expecting to tell the nation that the National Guard forces responding to Katrina had been federalized. Minutes before the scheduled press conference, Governor Blanco denied him that opportunity.<sup>16</sup>

President Bush countered with an offer to make General Honore a "dual-hat" commander. Within this seldom practiced command relationship, General Honore would have accepted a commission in the Louisiana National Guard and reported to both the Governor and the President. In addition to the Title 10 forces already under his command, his authority would have extended to include the Louisiana National Guard. His command also would have included all of the National Guardsmen from supporting states that were deployed in conjunction with the Emergency Management Assistance Compact (EMAC) agreements.

On 3 September, Governor Blanco rejected the President's dual-hat offer. She explained that she had a "fear of losing control of the Guard and undermining the efforts of Major General Bennett Landreneau."<sup>17</sup> (General Landreneau is the Louisiana

Adjutant General) The end result was a compromise that is termed a “parallel” command structure. This option allowed General Honore to continue commanding the Title 10 response, while the Mississippi and Louisiana Governors retained command of their respective Title 32 forces.<sup>18</sup>

This was a culminating point in the DOD response. It ended with a stare-down between a President unwilling to risk the political consequence of asserting his enumerated power over a state, and a southern democratic governor who stood her ground. This decision would come to rest in the WDA.

### **Congress Changes the 1807 Insurrection Act**

In September 2006, one year after Katrina, the 2007 Warner Defense Authorization Act became law. The bill passed with little fanfare but delivered a significant impact on the President’s authority over the National Guard. It modified a 200 year-old law known as the Insurrection Act which has its roots in the Whiskey Rebellion of 1794. Passed by Congress in 1807, its purpose was to provide a set of laws that limited the President’s authority for deploying troops to put down “lawlessness, insurrection and rebellion.” In more recent times, previous presidents have successfully invoked the Insurrection Act on several occasions. Examples include the following:

- 1957 – President Eisenhower deployed the National Guard to integrate public schools in Little Rock, Arkansas
- 1960s – President Johnson quelled race riots
- 1992 – President George Bush ended the riots following the Rodney King verdict in Los Angeles County

The post-Katrina Insurrection Act now includes the wording: “natural disaster, epidemic, serious health emergency, terrorist attack, or other conditions, when the President determines that the authorities of the state are incapable of maintaining public order.” The chart below compares the original and revised Insurrection Acts. <sup>19</sup>

### Comparison of Insurrection Act Differences

Original Insurrection Act of 1807	As amended by 2007 Defense Appropriations Bill
<p>§ 333. Interference with State and Federal law</p> <p>The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—</p> <p>(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection...</p>	<p>§ 333. <b>Major public emergencies;</b> interference with State and Federal law</p> <p><b>(a) USE OF ARMED FORCES IN MAJOR PUBLIC EMERGENCIES.--</b></p> <p style="padding-left: 40px;"><b>(1) The President may employ the armed forces, including the National Guard in Federal service, to--</b></p> <p><b>(A) restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States...</b></p>

Figure 2

### The National Guard is Uniquely Suited for Disaster Response

According to Lieutenant General H. Steven Blum, Chief of the NGB, “Homeland defense is mission one for the National Guard.”<sup>20</sup> No other component of the DOD is as equipped or prepared. Organic to nearly every state are what they have determined to



be the “10 Essential Capabilities” to perform the HLD/HLS mission.<sup>21</sup> These capabilities include: aviation for search and rescue and medical evacuation (MEDEVAC), engineers for clearing debris, military police and infantry to provide security, medical units for immediate care, logistics units to distribute food and water, maintenance and transportation. Also a Joint force Headquarters is required for command and control and communications. As a safety net, when states require an emergency response capability that is not on-hand, the Guard exercises a “help your neighbor” system known as the Emergency Management Assistance Compact (EMAC).<sup>22</sup> This proved extremely successful during Katrina.

In General Blum’s Congressional Testimony before the Senate Armed Services Committee Subcommittee on Emerging Threats, in March 2006, he identified 8 National Guard HLD/HLS initiatives to improve future disaster response.<sup>23</sup>

#### **1) The Joint Force Headquarters – State (JFHQ-State).**

The JFHQ-State provides a joint command and control function within each state and territory. It also provides a common operating picture to the appropriate national level headquarters and is integrated into every major contingency operation. One of its key missions is managing the Joint Reception, Staging and Onward Integration of personnel provided through the EMAC process.

## **2) The Joint Force Headquarters – Joint Operations Center (JFQ- JOC).**

This is the coordinating JOC located at NGB which synchronizes the JOCs in the 54 states and territories during disaster response. They also process information requirements to federal agencies as requested.

## **3) National Guard Chemical, Biological, Radiological/Nuclear, and High Explosive (CBRNE) Enhanced Force Package (NG CERFP).**

These are teams that are responsible for rapidly responding to “incidents involving chemical, biological, radiological or high explosive threats.”<sup>24</sup> There are 17 teams throughout the Guard that rehearse actions at a CBRNE incident. Their mission includes mass casualty decontamination and patient stabilization.

## **4) Critical Infrastructure Program – Mission Assurance Assessment (CIP-MAA).**

These teams assist civilian agencies in disaster response preparation. They also work on building relationships with first responders to assist in securing critical infrastructure and elements vital to the Defense Industrial Base, for example, power plants and refineries. There are currently six pilot teams in the field.<sup>25</sup>

## **5) National Guard Reaction Forces (NGRF).**

One of these teams is in each of the 54 states and territories. They consist of 75-125 Soldiers charged with responding to incidents within 4-8 hours. In the aftermath of Katrina, the NGRF “provided crucial support to law enforcement.”<sup>26</sup> They are task-organized from existing units and can conduct a variety of security missions.

## **6) Joint CONUS Communications Support Environment (JCCSE).**

This is a shared secure information network that links the states' JFHQ JOCs. It assists in providing situational awareness to governmental agencies at all levels. It also has VTC capability.

## **7) Weapons of Mass Destruction – Civil Support Teams (WMD-CST).**

These are teams consisting of 22 personnel that are trained to enter contaminated areas and determine the contaminating agent. The National Guard will field 55 of these teams by the end of FY07.

## **8) Aviation Security and Support (S&S) Battalions.**

These six battalions of 36 aircraft each are task organized across 38 states and perform a number of missions to include: search and rescue, medical evacuation (MEDEVAC) and support of local law enforcement. Their legacy OH58 Kiowa helicopters are currently being replaced by the new UH72A Lakota. The Lakota will have a hoist for rescue and extraction purposes. During Katrina, the S&S battalions' Forward-Looking Infrared Radar (FLIR) capability and live-feed video stream provided a valuable service unavailable from active component forces.

Included with the above capabilities is another resource that is unique to the National Guard – the Emergency Management Assistance Compact (EMAC).<sup>27</sup> This is a non-governmental organization that is administered by the National Emergency Management Agency (NEMA). It is designed to rapidly penetrate layers of bureaucracy

in emergency response scenarios and provide assistance to states with a declared state emergency. “EMACs” have been activated for external support in numerous disasters from hurricanes to wildfires.

Since being ratified in 1996, all 54 states and territories have become EMAC members. The system provides a myriad of equipment or services that one state would like to “purchase” on a temporary basis from another state. Reimbursement and liability is assumed by the supported state. The Katrina report from the Senate Committee on Homeland Security and Governmental Affairs comments on EMAC, “This process quickly resulted in the largest National Guard deployment in US history, with 50,000 troops and supporting equipment arriving from 49 states and four territories within two weeks.”<sup>28</sup> Lieutenant General Blum concludes, “Without question, EMAC enabled the National Guard to overcome many of the equipment/resource obstacles faced during Hurricanes Katrina and Rita.”<sup>29</sup>

The above 8 capabilities, when combined with EMAC, posture the National Guard far better than any other DOD component to respond to disasters. The ability to acquire situational awareness and rapidly synergize response capability across the 54 states and territories is a unique National Guard advantage. Federalization assumes that NORTHCOM can enhance response capability. Logic points to a fault in this argument. Adding a layer of bureaucracy only moves the decision cycle further from those in harm’s way. In disaster response, minutes equate to life or death. Therefore, we must integrate our efforts with NORTHCOM and dispense with the perceived adversarial relationship.

## **Initiatives to Integrate NORTHCOM and National Guard Capabilities**

Reports from several government agencies, including the White House, have identified opportunities to increase unity of effort between NORTHCOM and the National Guard. Several examples follow. It is important to note that none of these recommendations endorse federalizing the National Guard in disaster response.

### **1) Implement alternative command options.**

Federalizing military personnel for disaster response would require placing National Guard formations under a Title 10 Commander. There are two alternatives to this option that deserve consideration – *dual hat* and *parallel* command relationships. Introduced into law by the 2004 Defense Authorization Act, dual-hat allows the option of a Title 10 National Guard officer to command a “hybrid” organization of Title 10 and Title 32 Soldiers.

When exercising the dual-hat option, the commander would report to both the Governor and the President. Prior to Katrina, the dual-hat option had been used successfully several times in National Special Security Events (NSSEs). Some examples include the 2002 Winter Olympics, the 2004 G8 Summit Conference, the 2004 Democratic and Republican Conventions and Operation Winter Freeze.<sup>30</sup> As previously discussed, Governor Blanco refused the dual-hat option for General Honore in the aftermath of Katrina for fear of undermining her General Landreneau’s authority. Assistant Secretary of Defense (SECDEF) McHale does not support the dual-hat scenario in a crisis situation either. His major concern is the potential for the President and the governor to disagree, thus placing the commander in a precarious position.<sup>31</sup>

As we learned from that fateful day on Air Force One, the command option decision that prevailed was the *parallel* model. This left the Title 10 and Title 32 chains of commands intact. Despite not controlling the entire DOD military response, General Honore praised the parallel command structure, stating, “The resulting synergy between the title 10 forces under JTF-Katrina and the National Guard response under the respective governors proved critical to the success of the overall relief effort.”<sup>32</sup>

Assistant Secretary of Defense (SECDEF) McHale shares General Honore’s endorsement of the parallel command structure. In his testimony before the Senate Armed Services Committee, McHale commented, “when possible, we should preserve the command authorities of the governor, certainly respect[ing] the constitutional authorities of the President of the United States. And while recognizing two distinct chains of command – through a close coordination, deliberate staff planning, detailed anticipation of mission requirements and rigorous exercises to test that – we should preserve the two chains of command while insisting upon unity of effort through coordination.”<sup>33</sup>

After the most destructive hurricane on record, the commanders of both the Title 10 and Title 32 forces, along with the Assistant SECDEF for HLD, unanimously endorsed the parallel command structure. Again, this experience does not support legislation to expand the President’s power over the Guard.

## **2) Integrate National Guard generals into the NORTHCOM chain of command.**

A 2006 study performed by the Center for Strategic and International Studies observes, “To ensure that the National Guard is well understood and well represented

at senior leadership levels at NORTHCOM, DOD should make the Deputy Commander a Guard general officer.”<sup>34</sup> The study contends that historically an Army general has commanded US European Command and that a Navy admiral has commanded US Pacific Command, primarily because their respective service led the mission. The same argument can be extended to the National Guard leading the HLD/HLS mission. However, at present there are no National Guard generals in the NORTHCOM chain of command.

Another method of integrating the Guard into the NORTHCOM chain of command is to place a National Guard general in command of Army North (ARNORTH, formerly 5<sup>th</sup> Army). The precedent has already been set within NORTHCOM. Air Force North (AFNORTH, formerly 1<sup>st</sup> Air Force) has the mission of protecting the skies over the continental US and is commanded by a reserve component two-star general. Conversely, ARNORTH has no National Guard generals assigned to it, as the commander or otherwise. The Air Force seems to have recognized the value in putting a reservist in command. Appointing National Guard generals in command positions will bring additional credibility to NORTHCOM, thereby improving its coordinating relationship with the states and NGB.

### **3) Recognize NGB as a joint force manager advisor for DOD.**

In this capacity the Chief of NGB would advise the SECDEF and COCOM commanders on the plans and policies of the National Guard as they relate to HLD/HLS. NGB would also “battle-track” deployments and maintain situational awareness of the strength and location of available resources. It would then be able to

advise governors and adjutants general on where to solicit assistance through the EMAC process. This technique proved extremely effective during Hurricane Katrina. An extension of this recommendation is for the Chief, NGB, to receive a fourth star and share parity of position with the other joint chiefs. In the White House Katrina Report, *Lessons Learned*, it recommends that DOD “should consider chartering the NGB as a joint activity of the DOD.”<sup>35</sup>

#### **4) DOD should fully resource the State JFHQs.**

These command elements within the states are vital to the success of the HLD/HLS mission. One of the 8 capability initiatives identified above, the JTF-State manages the RSOI process for EMAC'd forces, as well as setting the conditions for the arrival of Title 10 forces. To improve the National Guard's disaster response readiness, DOD should increase JTF-HQ budgets to accommodate their fulltime manning needs and information technology requirements. This will increase their interoperability with all levels of government, law enforcement and military. Full funding will accelerate response timelines. It will also ensure interoperability at the Army and Joint levels.

JTF-HQs need the capability to be rapidly activated and pushed forward. They are the command and control cell that provides situational awareness for state governors, adjutants general and NORTHCOM. They should be prepared to assume command of both Title 10 and Title 32 forces as they are integrated into the response plan. According to the White House report, *Lessons Learned*, “If and when necessary, this JTF model enables a National Guard Commander familiar with State and local areas of operation to serve both in a Federal and State status providing both unity of effort and unity of command for Federal and State forces.”<sup>36</sup>



## **5) Perform frequent integrated exercises.**

One of the common themes from the aforementioned Katrina after action reports is the need for NORTHCOM and the National Guard get smarter on one another's capabilities. Participating in exercises like ARDENT SENTRY is an effective means to further this understanding.

ARDENT SENTRY is an annual exercise facilitated by NORTHCOM that rehearses key elements of CONPLAN 2501.<sup>37</sup> It is based on the simulation of multiple events covering the expanse of the US, from natural disasters to terrorist nuclear detonations. The intent is to graduate the levels of DOD response until at some point the mission becomes federalized. It incorporates NORTHCOM, NGB, multiple JFHQ-State elements and several other of the 8 capabilities mentioned previously. Upon completion, after action reviews are held and lessons learned are shared. Standard Operating Procedures (SOPs), and perhaps CONPLAN 2501, are then revised for use in future events.

In the aftermath of Katrina, Admiral Keating, Commander, NORTHCOM, has identified several advantages to having a National Guard officer commanding a "homeland response." His justification follows:<sup>38</sup> "(1) the overwhelming majority of forces that respond to disasters are/will be National Guard who will usually be on the scene in a state active duty status before DOD is requested to respond; (2) the NG is familiar with the local area and local culture; (3) the NG usually has close ties with first responders such as local and state law enforcement, fire departments, etc; and (4) the local community knows and relies upon the NG because they are part of the

community...NG personnel are more likely to have more experience working with local responders than the active component.”

In the final analysis, the National Guard is the most logical DOD component for the disaster response mission. Both Admiral Keating and General Honore, the two highest ranking Title 10 commanders assigned to the Katrina response mission, have endorsed the National Guard’s performance. Their statements compliment the Congressional testimony of General Blum which highlighted the 10 National Guard Essential Capabilities and the 8 National Guard HLD/HLS Initiatives. These testimonials of the National Guard’s performance and associated capabilities clearly counter any argument to expand the President’s authority.

Section 1076 of the 2007 Warner Defense Authorization Act increased the President’s authority to federalize the National Guard for disaster response. It should be repealed for these three reasons: 1) the Insurrection Act of 1807 already contained all of the power necessary for the President to federalize the National Guard, 2) the National Guard is more prepared for this mission than any other DOD component; and 3) implementing recommendations to integrate NORTHCOM and National Guard capabilities will set the conditions for future success. In summary, DOD disaster response requires a *unity of effort versus a unity of command*.

#### Endnotes:

<sup>1</sup> John Warner National Defense Authorization Act, HR 5122 [109], sec 1072-333 (2007)

<sup>2</sup> Congress, Senate, Judiciary Committee, Opening Statement of Chairman Senator Patrick Leahy, Chairman: Hearing On “The Insurrection Act Rider’ And State Control Of The National Guard,” 109<sup>th</sup> Cong., 2d sess., April 24, 2007, 1.

<sup>3</sup> ABA Standing Committee on Law and National Security, Hurricane Katrina Task Force Subcommittee Report (Washington, D.C.: ABA Standing Committee on Law and National Security, February 2006) p. 26.

<sup>4</sup> U.S. Constitution, art. 1, sec. 8.

<sup>5</sup> Congressional Research Service, Hurricane Katrina: DOD Disaster Response (Washington, D.C.: Library of Congress, September 2005), 8.

<sup>6</sup> Global Security.org, “U.S. Northern Command,” available from <<http://www.globalsecurity.org/military/agency/dod/northcom.htm>>; Internet; accessed 3 May 2007.

<sup>7</sup> Congress, House of Representatives, Committee on Armed Services, Statement by Honorable Paul McHale, Assistant Secretary of Defense for Homeland Defense: Subcommittee on Terrorism, Unconventional Threats and Capabilities, 109<sup>th</sup> Cong., 25 May 2006, 4.

<sup>8</sup> ABA Standing Committee on Law and National Security, Hurricane Katrina Task Force Subcommittee Report (Washington, D.C.: ABA Standing Committee on Law and National Security, February 2006) p. 27.

<sup>9</sup> Posse Comitatus Act, U.S. Code, sec 18, 1385 (1878).

<sup>10</sup> Freedberg, Sydney J., Jr., “Little Law has Big Impact on Use of Military at Home,” GOVEXEC.COM, 15 November 2005, <[http://www.govexec.com/story\\_page.cfm?articleid=32821](http://www.govexec.com/story_page.cfm?articleid=32821)> accessed 20 April 2007.

<sup>11</sup> It is important to note that the original intent of the PCA was to limit the President’s power over states by prohibiting federal troops from getting involved in states’ business. The Title 32 statute came well after PCA became law.

<sup>12</sup> ABA Standing Committee on Law and National Security, Hurricane Katrina Task Force Subcommittee Report (Washington, D.C.: ABA Standing Committee on Law and National Security, February 2006) p. 24.

<sup>13</sup> *Ibid.*, p. 26.

<sup>14</sup> Congress, Senate, Committee on Homeland Security and Governmental Affairs, Hurricane Katrina: A Nation Still Unprepared: Executive Summary, 109<sup>th</sup> Congress, May 2006, 504.

<sup>15</sup> Congressional Research Service, Hurricane Katrina: DOD Disaster Response (Washington, D.C.: Library of Congress, September 2005), 13.

<sup>16</sup> Congress, Senate, Committee on Homeland Security and Governmental Affairs, Hurricane Katrina: A Nation Still Unprepared: Executive Summary, 109<sup>th</sup> Congress, May 2006, 520.

<sup>17</sup> ABA Standing Committee on Law and National Security, Hurricane Katrina Task Force Subcommittee Report (Washington, D.C.: ABA Standing Committee on Law and National Security, February 2006) p. 27.

<sup>18</sup> Christine E. Wormuth, The Future of the Guard and Reserves, The Beyond Goldwater-Nichols Phase III Report (Washington, D.C.: The Center for Strategic and International Studies, July 2006), 80.

<sup>19</sup> John Warner National Defense Authorization Act, HR 5122 [109], sec 1072-333 (2007)

<sup>20</sup> LTG Blum – A Statement Before the Senate Armed Services Subcommittee on Emerging Threats, March 10, 2006, 2.

<sup>21</sup> National Guard Bureau, National Guard Homeland Defense White Paper: September 11, 2001, Hurricane Katrina and Beyond (Washington D.C.: October 11, 2005), 11.

<sup>22</sup> What is EMAC? <<http://www.emacweb.org/9>>; Internet; accessed 13 May 2007

<sup>23</sup> Congress, Senate, Armed Services Committee, Subcommittee on Emerging Threats, Statement by Lieutenant General H. Steven Blum, Chief, National Guard Bureau: On Homeland Defense and Military Support to Civilian Authority, 109<sup>th</sup> Cong., 2d sess., 10 March 2006, 3.

<sup>24</sup> LTG Blum – A Statement Before the Senate Armed Services Subcommittee on Emerging Threats, March 10, 2006, 4.

<sup>25</sup> The pilot states are: California, Colorado, Georgia, Minnesota, New York, and West Virginia as per an Army National Guard Domestic Operations Information Paper (Army National Guard Readiness Center, Arlington, VA: 5 June 2007).

<sup>26</sup> LTG Blum – A Statement Before the Senate Armed Services Subcommittee on Emerging Threats, March 10, 2006, 5.

<sup>27</sup> What is EMAC? <<http://www.emacweb.org/9>>; Internet; accessed 13 May 2007

<sup>28</sup> Congress, Senate, Hurricane Katrina: A Nation Still Unprepared, Executive Summary, Report of the Senate Committee on Homeland Security and Governmental Affairs, May 2006, 11.

<sup>29</sup> National Guard Bureau, National Guard Homeland Defense White Paper: September 11, 2001, Hurricane Katrina and Beyond (Washington D.C.: October 11, 2005), 11.

<sup>30</sup> LTG Blum – A Statement Before the Senate Armed Services Subcommittee on Emerging Threats, March 10, 2006, 10.

<sup>31</sup> Assistant Secretary of Defense for Homeland Defense Paul McHale, *Testimony before the Emerging Threats and Capabilities Subcommittee of the Senate Armed Services Committee*, March 10, 2006, 5.

<sup>32</sup> Lieutenant General Russel L. Honore and Colonel (Retired) Barney Barnhill, “Joint Task Force Katrina: See First – Understand First – Act First,” Journal of the Department of Operational Art and Campaigning, Spring 2006, 11.

<sup>33</sup> Assistant Secretary of Defense for Homeland Defense Paul McHale, *Testimony before the Emerging Threats and Capabilities Subcommittee of the Senate Armed Services Committee*, March 10, 2006, 5.

<sup>34</sup> Christine E. Wormuth, The Future of the Guard and Reserves, The Beyond Goldwater-Nichols Phase III Report (Washington, D.C.: The Center for Strategic and International Studies, July 2006), 84.

<sup>35</sup> The White House, The Federal Response to Hurricane Katrina Lessons Learned, February 2006, p. 96.

<sup>36</sup> Ibid., 95.

<sup>37</sup> Congress, House of Representatives, Committee on Armed Services, Statement by Honorable Paul McHale, Assistant Secretary of Defense for Homeland Defense: Subcommittee on Terrorism, Unconventional Threats and Capabilities, 109<sup>th</sup> Cong., 25 May 2006, 4.

<sup>38</sup> US House of Representatives, A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., 15 February 2006, 222.